

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES ROBINSON and
RESHELLE ROBINSON,
Plaintiffs,

v.

WELLS FARGO BANK, N.A.;
FIRST FRANKLIN MORTGAGE;
SAXON MORTGAGE SERVICES, INC.;
ORLANS ASSOCIATES and
WAYNE COUNTY,

Defendants

CASE NO. 08-CV-13048-DT
JUDGE GERALD E. ROSEN
MAGISTRATE JUDGE PAUL KOMIVES

REPORT AND RECOMMENDATION

I. **RECOMMENDATION:**

The Court should dismiss Wayne County as a defendant in this case in light of plaintiffs' failure to effect service of a summons and complaint upon this defendant within the time allowed by the Federal Rules of Civil Procedure.

II. **REPORT:**

A. *Procedural Background*

1. Plaintiffs filed their original complaint on July 15, 2008. Doc. Ent.1. On July 22, 2009, plaintiffs were granted leave to file an amended complaint. In this amended complaint, filed on August 1, 2009 plaintiffs named five defendants: (1) First Franklin Mortgage Loan, (2) Wells Fargo Bank, (3) Orlans Associates, (4) Saxon Mortgage Services and (5) Wayne County. Doc. Ent.25 .
2. On September 8, 2010, this Court entered an order adopting my report and

recommendation and dismissing plaintiff's claims against defendants Wells Fargo Bank and Saxon Mortgage Services.

3. On November 30, 2010, defendant Orlans filed a motion for summary judgment. I have as of this date filed a report and recommendation that the Court should grant this. motion.

4. The factual background of this case has been set forth at length in my prior report and recommendation filed on August 5, 2010 and will not be repeated here.

5. On September 9, 2010 I issued an order requiring plaintiffs to show cause in writing no later than September 22, 2010 why their claims against defendant Wayne County should not be dismissed based on plaintiffs' failure to comply with the service requirements set forth in Fed.R.Civ.P.4(m). Doc.Ent.49.

As of this date there has been no response filed by plaintiffs to this order to show cause.

B. *Legal Standard*

Fed.R.Civ.P. 4(m) provides that if a defendant is not served within 120 days after the complaint is filed, the court-on motion or on its own after notice to the plaintiff- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. If the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

C. *Analysis*

1. On September 9, 2010, some thirteen months after plaintiffs filed their amended complaint, I issued an order for plaintiffs to show cause why defendant Wayne County should not be dismissed from this case in light of plaintiffs' failure to effect service within the 120 days time limit set forth in Rule 4(m).

2. The order to show cause required a response in writing on or before September 22, 2010.
3. As of this date, the Court has received no communication of any sort from plaintiffs, nor has service been effected.
4. The Court should dismiss Wayne County as a defendant in this case.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than five (5) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Dated: March 16, 2011

s/Paul J. Komives
PAUL J. KOMIVES

The undersigned certifies that a copy of the foregoing order was served on the attorneys of record and by electronic means or U.S. Mail on March 16, 2011.

s/Eddrey Butts
Case Manager